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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,470	07/01/2003	Dimitri Peter Zafiroglu	SWZ-010	1592

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EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/611,470	Applicant(s) ZAFIROGLU, DIMITRI PETER	
	Examiner Matthew D. Matzek	Art Unit 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) 23-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 38-62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/23/2005 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 9, 11, 20, 38-39, 41-42, 51-54, 58-59 and 62 are rejected under 35 U.S.C. 102(e) as being anticipated by Mitzutani et al. (US 6,803,334) as substantially set forth in the Office Action dated 10/12/2005.
3. Claims 1, 7, 9, 11, 14, 42-44, 46, 51, 52 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Pickens, Jr. et al. (US 4,389,442).

Pickens, Jr. et al. teach a fabric for a wall covering which is a needled nonwoven batt of staple fibers (Abstract). The needling produces rows of clustered loops **34** of fibers projecting outwardly in a transverse direction to the plane of the cloth or film **22** (col. 2, lines 61-68). The needled batt may have a backing **40** added on the back surface **20** of

the batt **16** by way of latex or other adhesive (col. 3, lines 50-55). The finished product has the fibrous outer layer and a layer of adhesive with depressed areas (non-needed areas) and elevated areas (needled), and the fibers of the depressed areas are anchored in the adhesive layer **40**. The needled fabric is needled through another fabric layer **22** (Abstract). This fabric layer may be woven or knitted and is part of the fibrous outer layer. Claims 42 and 43 are rejected as the loops **34** and **35** are formed via needle-punching (stitch-bonding). The needling will create rows or patterns of loops and depressed areas (col. 3, lines 10-15). This pattern may even resemble bricks with mortar in between each brick (col. 3, lines 15-22).

4. Claims 1, 6-9, 11 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Higgins et al. (US 5,567,257).

Higgins et al. teach a process for forming a bonded pile fabric using low levels of adhesive. Figures 8 and 9 illustrate one embodiment with pile fabric **10**, adhesive layer **40** and open weave layer **17** (col. 8, lines 28-32). Claim 42 is rejected as the pile fabric is nonwoven.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-8, 12-18 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. (US 6,803,334) as substantially set forth in the Office Action dated 10/12/2005.

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6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. as applied to claim 1 above, and further in view of Kenmochi et al. (US 6,319,593) as substantially set forth in the Office Action dated 10/12/2005.

7. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. (US 6,803,334) as substantially set forth in the Office Action dated 10/12/2005.

8. Claim 43-47 and 60-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. as applied to claim 42 above, and further in view of Tocachek et al. (US 5,310,590) as substantially set forth in the Office Action dated 10/12/2005.

9. Claims 48-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. as applied to claim 1 above, and further in view of Griswold et al. (US 3,081,515) as substantially set forth in the Office Action dated 10/12/2005.

10. Claims 55-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mitzutani et al. as applied to claim 1 above, and further in view of Chen et al. (US 5,990,377) as substantially set forth in the Office Action dated 10/12/2005.

Double Patenting

11. Claims 1-22 and 38-62 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 41-54 of copending Application No. 10/307,186. Although the conflicting claims are not identical, they are not patentably distinct from each other because both applications recite a fibrous face layer with elevated and depressed areas with the depressed areas adhesively attached to the rest of the composite.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Response to Arguments

12. The provisional double patenting rejection in view of Application 10/611,769 has been withdrawn as the '769 application is directed to a materially different invention.

13. Applicant's arguments filed 11/23/2005 have been fully considered but they are not persuasive.

14. Applicant argues that Mitzutani (US 6,803,334) does not teach a layer of adhesive in which the fibrous layer is anchored. As provided by Applicant on page 9 of the response dated 11/23/2005, Mitzutani teaches that the fibrous outer layer may be attached to a porous film via adhesive. Mitzutani further teaches that the adhesive is provided via lines along with thicknesses of said lines. Examiner equates these adhesive lines to a discontinuous layer of adhesive. This interpretation of Mitzutani provides for the anticipation of independent claim 1.

15. Applicant alleges that the basis weight of the adhesive as taught by Mitzutani is insufficient to create a layer, however Applicant has failed to provided any evidence to support such an allegation. Examiner maintains the position that the lines of adhesive as taught by Mitzutani constitutes a discontinuous layer of adhesive and as such anticipates claim 1 as instantly claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423.

The examiner can normally be reached on 8:30 am - 5:00 pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm

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